

SENATE BILL 616

D1

CONSTITUTIONAL AMENDMENT

2lr2185

By: **Senator Jennings**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Judges – Mandatory Retirement**

3 FOR the purpose of proposing amendments to the Maryland Constitution altering the
4 mandatory retirement age for judges under certain circumstances; requiring a
5 certain certification of certain judges; making certain technical corrections;
6 providing for the application of this Act; and submitting this amendment to the
7 qualified voters of the State for their adoption or rejection.

8 BY proposing an amendment to the Maryland Constitution
9 Article IV – Judiciary Department
10 Section 3, 3A, 5A(f), 18B, and 41D

11 BY proposing an addition to the Maryland Constitution
12 Article IV – Judiciary Department
13 Section 3B

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
16 concurring), That it be proposed that the Maryland Constitution read as follows:

17 **Article IV – Judiciary Department**

18 3.

19 **(A)** Except for the Judges of the District Court, the Judges of the several
20 Courts other than the Court of Appeals or any intermediate courts of appeal shall,
21 subject to the provisions of Section 5 of this Article of the Constitution, be elected in
22 Baltimore City and in each county, by the qualified voters of the city and of each
23 county, respectively, all of the said Judges to be elected at the general election to be

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 held on the Tuesday after the first Monday in November, as now provided for in the
2 Constitution.

3 **(B)** Each of the said Judges shall hold his office for the term of fifteen years
4 from the time of his election, and until his successor is elected and qualified, or until
5 he shall have attained the age of [seventy] ~~SEVENTY-TWO~~ years, whichever may first
6 happen, and be reeligible thereto until he shall have attained the age of [seventy]
7 ~~SEVENTY-TWO~~ years, and not after.

8 **(C)** In case of the inability of any of said Judges to discharge his duties with
9 efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall
10 be in the power of the General Assembly, two-thirds of the members of each House
11 concurring, with the approval of the Governor to retire said Judge from office.

12 **3A.**

13 (a) (1) Except as provided in paragraph (2) of this subsection, any former
14 judge, except a former judge of the Orphans' Court, may be assigned by the Chief
15 Judge of the Court of Appeals, upon approval of a majority of the court, to sit
16 temporarily in any court of this State, except an Orphans' Court, as provided by law.

17 (2) (i) A retired judge of the Circuit Court for Montgomery County
18 that sits as the Orphans' Court for Montgomery County may be assigned by the Chief
19 Judge of the Court of Appeals, upon approval of a majority of the Court of Appeals, to
20 do an act that a judge of the Orphans' Court for Montgomery County is authorized to
21 perform.

22 (ii) A retired judge of the Circuit Court for Harford County that
23 sits as the Orphans' Court for Harford County may be assigned by the Chief Judge of
24 the Court of Appeals, upon approval of a majority of the Court of Appeals, to do an act
25 that a judge of the Orphans' Court for Harford County is authorized to perform.

26 (b) The provisions of this section apply, notwithstanding provisions
27 appearing elsewhere in this Article pertaining to retirement of judges upon attaining
28 age [70] **72**.

29 **3B.**

30 **(A) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE,**
31 **A JUDGE OF THE APPELLATE COURTS, A CIRCUIT COURT, OR THE DISTRICT**
32 **COURT WHO ATTAINS THE AGE OF SEVENTY YEARS ON OR AFTER JANUARY 1,**
33 **2013, AND IS OTHERWISE ENTITLED TO HOLD OFFICE MAY SERVE, ON NOTICE**
34 **TO THE PUBLIC, UNTIL THE JUDGE'S SEVENTY-SECOND BIRTHDAY, PROVIDED**
35 **THAT FROM AND AFTER THE JUDGE'S SEVENTIETH BIRTHDAY, A MAJORITY OF**
36 **JUDGES OF THE COURT OF APPEALS ANNUALLY CERTIFIES THAT THE JUDGE IS**

1 PHYSICALLY, MENTALLY, AND TEMPERAMENTALLY QUALIFIED TO CONTINUE TO
2 PERFORM THE DUTIES OF OFFICE.

3 (2) A JUDGE SO CERTIFIED SHALL, DURING THE YEAR
4 FOLLOWING CERTIFICATION, BE ELIGIBLE FOR REAPPOINTMENT OR
5 REELECTION FOR AN ADDITIONAL TERM AS PROVIDED IN SECTIONS 3, 18B, AND
6 41D OF THIS ARTICLE.

7 (B) IF THE CERTIFICATION OF A JUDGE OF THE COURT OF APPEALS IS
8 AT ISSUE, THAT JUDGE SHALL EXCUSE HIMSELF OR HERSELF FROM
9 PARTICIPATION IN THE CERTIFICATION, AND THE CHIEF JUDGE OF THE COURT
10 OF SPECIAL APPEALS SHALL SIT AS A MEMBER OF THE COURT OF APPEALS FOR
11 THE PURPOSE OF CONSIDERING THAT CERTIFICATION.

12 5A.

13 (f) An appellate court judge shall retire when he attains his [seventieth]
14 SEVENTY-SECOND birthday.

15 18B.

16 (a) For the purpose of implementing the amendments to this article, dealing
17 with the selection and tenure of appellate court judges, the following provisions shall
18 govern.

19 (b) Each judge of an appellate court who is in office for an elected term on
20 the effective date of these amendments, unless he dies, resigns, retires, or is otherwise
21 lawfully removed, shall continue in office until the general election next after the end
22 of his elected term, or until his [seventieth] SEVENTY-SECOND birthday, whichever
23 first occurs. His continuance in office is then subject to the provisions of section 5A(c)
24 and (d) of this article, applicable to judges of that court, but in no event shall any judge
25 continue in office after his [seventieth] SEVENTY-SECOND birthday.

26 (c) Each judge of a court specified in subsection (b) who is in office on the
27 effective date of these amendments, but who has not been elected to that office by the
28 voters, shall, within fifteen days after the effective date of these amendments, be
29 reappointed to that office. His continuance in office is then subject to the provisions of
30 section 5A(c) and (d) of this article, applicable to judges of that court, but in no event
31 shall any judge continue in office after his [seventieth] SEVENTY-SECOND birthday.

32 41D.

33 (A) (1) The Governor, by and with the advice and consent of the Senate,
34 shall appoint each judge of the District Court whenever for any reason a vacancy shall
35 exist in the office.

1 **(2)** All hearings, deliberations, and debate on the confirmation of
2 appointees of the Governor shall be public, and no hearings, deliberations or debate
3 thereon shall be conducted by the Senate or any committee or subcommittee thereof in
4 secret or executive session.

5 **(3)** Confirmation by the Senate shall be made upon a majority vote of
6 all members of the Senate.

7 **(4)** A judge appointed by the Governor may take office upon
8 qualification and before confirmation by the Senate, but shall cease to hold office at
9 the close of the regular annual session of the General Assembly next following his
10 appointment or during which he shall have been appointed by the Governor, if the
11 Senate shall not have confirmed his appointment before then.

12 **(B) (1)** Each judge appointed by the Governor and confirmed by the
13 Senate shall hold the office for a term of ten years or until he shall have attained the
14 age of [seventy] **SEVENTY-TWO** years whichever may first occur.

15 **(2)** If the ten year term of a judge shall expire before that judge shall
16 have attained the age of [seventy] **SEVENTY-TWO** years, that judge shall be
17 reappointed by the Governor, with the Senate's consent, for another ten year term or
18 until he shall have attained the age of [seventy] **SEVENTY-TWO** years, whichever may
19 first occur.

20 **(C)** To the extent inconsistent herewith, the provisions of Sections 3 and 5 of
21 this Article shall not apply to judges of the District Court.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
23 determines that the amendment to the Maryland Constitution proposed by this Act
24 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the
25 Maryland Constitution concerning local approval of constitutional amendments do not
26 apply.

27 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
28 proposed as an amendment to the Maryland Constitution shall be submitted to the
29 qualified voters of the State at the next general election to be held in November, 2012
30 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
31 At that general election, the vote on this proposed amendment to the Constitution
32 shall be by ballot, and upon each ballot there shall be printed the words "For the
33 Constitutional Amendment" and "Against the Constitutional Amendment," as now
34 provided by law. Immediately after the election, all returns shall be made to the
35 Governor of the vote for and against the proposed amendment, as directed by Article
36 XIV of the Maryland Constitution, and further proceedings had in accordance with
37 Article XIV.